IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

S.B. CIVIL WRIT PETITION NO. 7939/2005

BHERU LAL Vs. STATE OF RAJASTHAN & ORS.

DATE: 24.07.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Virendra Dangi for the petitioner.
Mr. B.S. Chhaba, Addl. GA for the State.
Mr. Hanuman Choudhary and
Mr. Rajesh Mootha for the respondents.

****

The petitioner is a member of Schedule Caste and is living in his ancestral house situated at village Ajabpura, Panchayat Bobari, Tehsil Jamvaramgarh, District Jaipur. In the year 1990 he filed a civil suit before the Court of Civil Judge (Jr. Division) & Judicial Magistrate No.1, Jaipur District, Jaipur and the same was allowed by the Court below vide its judgment dated 24.11.94 and the former Sarpanch, Head Master alongwith District Collector, Jaipur, B.D.O., Secretary of Gram Panchayat, Patwari Halka were restrained through permanent injunction from dispossessing the petitioner and from making interference in the use and occupation of the house in question. Against the order of the Court below dated 24.11.94, appeal and revision were filed by the

opposite party but the same were also rejected. Further a D.B. Civil Writ Petition No. 3514/2000 was also filed by the family members and relatives of the Sarpanch for dispossessing the petitioner from the house in question and that too was dismissed by this Court vide judgment dated 12.05.2005. The villagers in the leadership of former Sarpanch moved an application through Head Master of the Govt. School before the Estate Officer and Additional Collector-II, Jaipur for evicting the petitioner from his house and the Estate Officer vide its order dated 30.03.2002 passed the eviction order against the petitioner. The said order dated 30.03.2002 passed by the Estate Officer was challenged in appeal filed before the District Judge, Jaipur District, Jaipur and the same was dismissed vide judgment dated 12.09.2005.

Aggrieved and dissatisfied with the judgments passed by the Estate Officer dated 30.03.2002 and the District Judge dated 12.09.2005, the petitioner has preferred the instant writ petition on the ground that the order passed by the Estate Officer is without jurisdiction as the petitioner is not an unauthorised occupant of the house in question and the provisions of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (for short 'the Act of 1964') are

not applicable to the instant case and the Appellate Court has also seriously erred in not considering this legal aspect and dismissed the appeal filed by the petitioner.

Per contra, learned counsel for the respondents submits that in the revenue area of Gram Panchayat Bobari, there is no village like Ajabpura as stated by the petitioner. In fact the village Ajabpura comes under the revenue area of Gram Panchayat Dhoula.

It is also empathetically denied that the petitioner and his family members are residing in the house for the last more than four decades, in fact the land in question on which the petitioner has encroached, belongs to the Government Upper Primary School and the Tehsildar, Jamvaramgarh also made a measurement of the land in question which has been shown as Khasra No. 75 in Gram Panchayat Dhoula. So far as the decree passed by the Civil Court, it is stated that the said decree was passed ex parte and the appeal which was preferred by the respondents has been dismissed on the ground of delay and not on merits.

Further the Estate Officer considered the encroachment over the Government land and has rightly exercised his powers under the Act and passed the eviction order dated 30.03.2002 and the same has

rightly been upheld by the District Judge vide its judgment dated 12.09.2005, which requires no interference by this Court.

Reply on behalf of respondent No.5 Akhil Bhartiya Dr. Ambedkar Vichar Manch, Rajasthan Pradesh through its President has also been submitted supporting the case of the petitioner.

I have heard rival submissions of the respective parties and have also carefully gone through the judgment dated 30.03.2002 passed by the Estate Officer as well as the judgment dated 12.09.2005 passed by the District Judge, Jaipur District, Jaipur.

Section 2 (**Nature of the Act)** of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 provides to evict the trespassers who neither have to right of interest nor an authority to continue in possession. The unauthorised occupants are not only deprived of right but possession too for these trespassers. The Act does not provide remedy to those occupants who have acquired right in the premises by adverse possession. The proceedings contemplated under the Act is summary yet the principles of natural justice must strictly be followed. No person should be condemned unheard.

Further Section 2(e) of the Act of 1964, which provides definition of 'unauthorized occupation', reads as under:-

> **“2(e)-** “Unauthorised occupation”, in relation to any public premises means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant of any other ode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

Having gone through the said Section 2(e) of the Act of 1964 which provides definition of “unauthorised occupation”, these provisions can only be applicable to a person who has been given public premises by any authority and shall be allowed to occupy the premises for a certain period and which has been expired or has been determined for any reasons, then only such person under the Act of 1964, can be evicted from such premises.

Here in the instant case, the petitioner is residing in Bada for the last more than four decades and this Bada was never been allotted by any authority and having adverse possession and as such, as in the nature of the Act, it is made clear that this Act does not provide remedy to those occupants who have acquired

right in the premises by adverse possession. At the most the petitioner having a adverse possession over the land , may be the petitioner can be a encroacher having unauthorised encroachment over Bada/house in question, therefore, he can only be removed by invoking the provisions of the Rajasthan Land Revenue Act, 1956 (for short 'the Act of 1956') by issuing notice under Section 91 of the Act of 1956.

Thus, it is clear that the Estate Officer as well as the District Judge, Jaipur District, Jaipur has not rightly appreciated the law as also the facts of the case and the Estate Officer has passed the order without jurisdiction and dismissal of the appeal of the petitioner by the District Judge is also against the settled proposition of law.

In view of the observations made herein above, the writ petition stands allowed and the impugned judgment dated 30.03.2002 passed by the Estate Officer & Additional Collector-II, Jaipur and the judgment dated 12.09.2005 passed by the District Judge, Jaipur District, Jaipur are herewith quashed and set-aside.

(K.S. RATHORE),J.

/KKC/